NO. 83-841

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

DOUGLAS M. BILLINGSLEY,

PETITIONER

VS.

STATE OF ALABAMA,

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT AND COURT OF CRIMINAL APPEALS OF ALABAMA

BRIEF AND ARGUMENT IN OPPOSITION TO THE WRIT

OF

CHARLES A. GRADDICK
ATTORNEY GENERAL

JOSEPH G. L. MARSTON III
ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
250 Administrative Building
64 N. Union Street
Montgomery, Alabama 36130
(205) 834-5150

ATTORNEYS FOR RESPONDENT

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QUESTIONS PRESENTED

I.

ON THE SEARCHES AND SEIZURES

a. Where police are called to a residence to investigate a homocide and on arriving at the residence discover the victim of a shotgun slaying inside the residence, does the Fourth Amendment authorize the police to enter the premises and conduct an immediate search thereof for weapons, other victims, perpetrators and any evidence which delay might spoil?

b. Where police are called by householder or at his direction to investigate a crime within the house and on arrival are admitted to the house, do the police have consent to enter the house and remain therein for a time reasonably necessary for them to complete their investigation of the crime at that

the seized items of evidence at trial, where at least some of the searches are patently legal?

II.

ON PRE-TRIAL PUBLICITY

Where a criminal defendant's conviction is reversed and remanded on appeal, does the publishing of a single newspaper article on the day of the re-trial reporting the setting of the re-trial and briefly sketching some of the facts of the case give such a defendant the right to a continuance?

PARTIES

In the Circuit Court of Talladega County, Alabama, the Court of Criminal Appeals and Supreme Court of Alabama the parties were: Douglas M. Billingsley, who is Petitioner herein and the State of

Alabama, which is Respondent herein.

The matters at issue here were first placed in issue in the Circuit (trial) Court and have been at issue throughout this litigation.

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The decision and opinion of the Court of Criminal Appeals of Alabama affirming the Petitioner's conviction is reported as follows:

Billingsley v. State, 437 So. 2d 601 (Cr. App. Ala., 1983)

The order of the Supreme Court of Alabama denying the Petitioner a writ of certiorari is reported as follows:

Ex parte: Billingsley; In re: Billingsley v. State, 437 So. 2d 601 (S. Ct. Ala., 1983)

JURISDICTION

The Petitioner has invoked this Honorable Court's Jurisdiction under 28 U.S.C. 1257 (3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Petitioner is advancing alleged claims under the Fourth and Fourteenth Amendments to the Constitution of the United States.

STATEMENT OF THE CASE

The Petitioner was indicted for murder in the first degree by the grand jury of Talladega County, Alabama. He pleaded not guilty, was tried by a jury and was convicted of murder in the second degree and sentenced to twenty years imprisonment. The Court of Criminal Appeals of Alabama affirmed the conviction on April 22, 1980. Billingsley v. State, 402 So. 2d 1052 (Cr. App. Ala. 1980) On one of the two issues presented here the Court wrote:

"V

"The seizure of the blood and tissue from Mrs. Billingsley's hair was proper. The material observed was in plain view. Harris v. United States, 390 U.S. 234, 88 S.Ct. 992, 19 L.Ed.2d 1067 (1968). The officers were justified in seizing the potential evidence before it could fall or be washed out. Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966). Moreover, the defendant has no standing to challenge the alleged search of his wife's person. Fourth Amendment rights are 'personal rights' which 'may not be asserted vicariously.' Rakas v. Illinois, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978).

"Relying on Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978), the defendant contends that a shotgun found in his bedroom closet was illegally seized. Mincey held that there was no 'murder scene exception' to the warrant requirement of the Fourth Amendment. '[T]he warrantless search of Mincey's apartment was not constitutionally permissible simply because a homicide had recently occurred there.' However, the Supreme Court did not condemn

all investigating and warrantless searches at the scene of a crime.

> "We do not question the right of the police to respond to emergency situations. Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. Similarly, when the police come upon the scene of a homicide they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises.... And the police may seize any evidence that is in plain view during the course of their legitimate activities. Mincey, 98 S. Ct. at 2413-14.'..." (402 So. 2d 1052, 1059-1060)

However, on July 10, 1981, the Supreme Court of Alabama reversed the conviction on the grounds that the prosecutor had improperly commented to the jury on the Petitioner's failure to call his wife as a witness. Ex parte: Billingsley, 402 So.2d 1060 (S. Ct. Ala. 1981)

On remandment and re-arraignment the Petitioner again pleaded not guilty. (R. p. 20)

On the day before the re-trial commenced, February 15, 1982, the Petitioner filed a motion to suppress the evidence. The body of the motion read as follows:

> "Comes the defendant, through his attorney, and moves the Court to enter an Order suppressing as evidence in this case, any and all tangible things seized from the defendant's person or place of residence by law enforcement

officers, and as grounds for said relief defendant shows unto the Court the following, separately and severally:

"1. That the seizure of any tangible items from the defendant's place of residence was accomplished illegally and in violation of the Constitutions of the State of Alabama and the United States of America, as amended.

"2. That the seizure of articles of clothing from the defendant, while in custody, was accomplished illegally and in violation of said Constitutions, as amended." (R. p. 5)

On the same date, the Petitioner also filed a motion in limine, on general and conclusory grounds, seeking to prevent any evidentiary reference to practically the whole of the State's evidence in the case. As regards the matters at issue here, the motion sought:

"...[T]he Court to enter an Order directing the prosecutor to refrain from eliciting testimony regarding the matters herein below specified, or from alluding to,

or mentioning in any way said matters. Defendant's grounds relating to each matter are stated herein below:

"1. Any firearm or firearm ammunition seized or located in defendant's place of residence subsequent to the death alleged in the indictment.

"Grounds: (a) Unconstitutional seizure.

(b) Irrelevant and immaterial, as counsel for defendant is informed and believes that the prosecutor is unable to proffer evidence tending to show that any firearm located in defendant's residence was, or probably was, used in the alleged homicide weapon, and introduction of such firearm in evidence would have no probative value, but would greatly prejudice the defendant.

"2. Any tangible item seized from the defendant's person during his incarceration because said items were unlawfully seized, while the

defendant was unlawfully [sic] incarcerated...." (R. p. 6)

Before trial a lengthy hearing was held at which it was shown that there were several searches of the Petitioner's home and a consensual seizure of a sample of Mrs. Billingsley's hair. No evidence was presented at this hearing on the seizure of the petitioner's clothes. From the evidence presented at this hearing as well as what he recalled from the first trial, the learned trial judge could easily determine that at least some of these searches and seizures were patently legal. The Petitioner made no effort to identify the particular searches or seizures he thought ought to be suppressed. At the close of the evidence at this hearing, the Trial Judge gave the Petitioner the opportunity to particularize his claims by argument.

However, the Petitioner declined to present any argument, and His Honor overruled the motions. (R. pp. 8-61)

This, of course, did not prevent the Petitioner from objecting to particular items of evidence during the trial, but the Petitioner made no trial objections on the basis of the Fourth Amendment.

On the day of trial, the Petitioner moved for a continuance on the basis of a single newspaper article.[1] This article simply stated that the case had been set for trial after the Alabama Supreme Court had reversed the original conviction. The Trial Judge denied the continuance on the grounds that he could not see how the article could have prejudiced the Petitioner. (R. pp. 8-9 and 7)

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[1]The Petitioner never requested a change of venue.

On February 16, 1982, the cause came on for trial before Honorable William C. Bibb and a Jury. The Appellant was attended by his attorneys, Honorable Huel M. Love and Honorable Greg Wood. The State was represented by the Attorney General of Alabama, Charles A. Graddick and his Assistants, Honorable Don Valeska, Honorable Bill Wasden and Honorable Mike Eley. On hearing the evidence, arguments of counsel and charge of the Court, the Jury returned a verdict of guilty of murder in the second degree and a sentence of ten (10) years and one (1) day. (R. p. 20)

The Appellant was adjudged guilty and sentenced in accordance with the verdict. (R. p. 21)

Appeal was taken to the Court of Criminal Appeals of Alabama, which on May 31, 1983, affirmed the conviction.

Billingsley v. State, 437 So. 2d 601 (Cr. App. Ala. 1983) On the points at issue here the Court of Appeals held:

1. The undisputed evidence was that: The officers were called to the Petitioner's home at the direction of the Petitioner; the officers entered the home without any objection from the Petitioner or his wife. The officers immediately found a homicide victim on the living room floor. In light of the Petitioner's statement that he did not know the deceased nor how the deceased died, the search of the house for other victims or perpetrators was legal. The Court also ruled that the Petitioner had not properly preserved his Fourth Amendment claims for review. (437 So. 2d 601, 606-607)

2. The newspaper article was not likely to create any serious prejudice,

and such prejudice as it did create could not be cured even by a prolonged delay. (437 So. 2d 601, 603-606)

Review was sought in the Alabama Supreme Court and denied without opinion on September 23, 1983. Ex parte: Billingsley, 437 So. 2d 601 (S. Ct. Ala., 1983)

STATEMENT OF THE FACTS

The factual issues in this case relate to the searches and seizures. Evidence was heard on these in a hearing and at trial and will be so presented below:

A.

AT THE HEARING

In examining the evidence at the hearing it must be recalled that the learned trial judge had sat on the earlier trial and was already familiar with the evidence. Thus, for example,

although no evidence was offered at the hearing on how the police came to be called to the Billingsley home, His Honor knew that the trial evidence would show that the call originated with the Petitioner.

On the evening of February 20, 1979, Officers Robert Haye and Wayne Holmes of the Sylacauga Police Department were dispatched to the Petitioner's residence to investigate a "10-56" (drunk on the premises) or a "10-89" (dead body on the premises). On arriving at the Petitioner's residence, Officer Hay found the front door open but the outer glass storm door closed. He could see the lower portion of a prostrate human body inside the house. He knocked and entered. He found a body on the floor with a large gun shot wound in the head. No weapon was in evidence. Officer Hay called for

assistance, and Captain Bryan, the watch commander, arrived within five or ten minutes. (R. pp. 14-17)

A detailed chronology of the next thirty minutes is impossible to develope but certain things are clear. First, there were numerous people in the house. When Officer Haye arrived he found, in addition to the Petitioner and his wife, two neighbor ladies. At some point a relative of the Petitioner, Mr. Breedlove, arrived. These people with the knowledge and apparent consent of the Petitioner and his wife, wondered about the house. At different points in time the neighbor ladies were in the living room and the kitchen. After the Petitioner and his wife had been taken to the police station, Mr. Breedlove apparently attempted to locate a quantity of money, which he thought was in the

house. The Petitioner and his wife wandered from the living room to the bedrooms and back again. It was in this context that the officers searched the house and located a shotgun which smelled as if it has been recently fired. After removing the body and photographing the scene, most of the officers left, but a police officer remained on the premises until the investigation was completed early the next morning. (R. pp. 14-60)

Early the next morning, the officers took a sample of Mrs. Billingsley's hair, which contained blood and tissue. This was done at the police station, with her consent. (R. pp. 39-40)

II.

TRIAL EVIDENCE

During the early evening of February 20, 1979, the Petitioner knocked on the back door of his next door neighbor, Mrs.

Wilma Black. The Petitioner told Mrs. Black that he had killed a man, whom he thought to be Mrs. Black's son-in-law. Mrs. Black accompanied the Petitioner back to his house and observed the body of a man on the Petitioner's living room floor. It was not her son-in-law. (R. pp. 69-70)

The Prosecuter's questions continued:

"Q. Now, what, if anything, did you do after that?

"A. Well, Doug asked me to call the police for him.

"Q. Okay, and did you do so?

THE COURT: Excuse me just one minute. Whom did you say called the police?

THE WITNESS: He asked me to call them.

THE COURT: Oh, Doug asked you to call the police for him.

THE WITNESS: Right.

THE COURT: I see. Go ahead.

"Q. So you're speaking of Doug Billingsley.

"A. Right.

"Q. The defendant asked you to call the police for him.

"A. Right, And I couldn't think of the police's number, so I called the operator.

"Q. And what did you tell the operator, if anything?

"A. I told her there had been a man killed and she asked me where at, and I said, I don't know. I couldn't even think of the address, and Doug told me to tell her where it was at." (R. pp. 70-71)

The police, both patrolmen and detectives, arrived, and, after the Petitioner denied any knowledge of the deceased, the police searched the house. They found a shotgun in a bedroom closet, which smelled as though it had been fired a short while before, and other evidence and took photographs. An officer remained on the premises guarding them all night. The next morning the grounds were searched but no evidence was discovered. At this same time the forensic team

entered the house and took samples of blood-stained upolstery, carpet. etc. (R. pp. 13-61)

SUMMARY OF THE ARGUMENT

1. As a matter of strategy the Petitioner made a broad attack on the various searches at issue in this case and resisted particularizing them. This was an adequate State law ground for the Alabama Courts' decisions. Parker v. North Carolina, 397 U.S. 790, 25 L. Ed. 2d 785, 90 S. Ct. 1458 (1970)

2. The initial search of the Petitioner's house was legal since it was based on (a) consent implied by the Petitioner's summons, (b) the need to determine if other victims, perpetrators or weapons were on the premises. (Mincey v. Arizona, 437 U.S. 385, 57 L. Ed. 2d 290, 98 S. Ct. 2408 [1978]; Michigan v.

Tyler, 436 U.S. 499, 56 L. Ed. 2d 486, 98 S. Ct. 1942 [1978]) and (c) the need to preserve evidence, such as odors or the lack thereof, which might rapidly deteriorate (Schmerber v. California, 384 U.S. 757, 16 L. Ed. 2d 908, 86 S. Ct. 1826 [1966]); Breithaupt v. Abram, 352 U.S. 432, 1 L. Ed. 2d 448, 77 S. Ct. 408 [1957]) The seizure of the Petitioner's bloodstained clothes after his arrest was lawful. United States v. Robinson, 414 U.S. 218, 38 L. Ed. 2d 427, 94 S. Ct. 467 (1973); Gastafson v. Florida, 414 U.S. 260, 38 L. Ed. 2d 456, 94 S. Ct. 488 (1973). The seizure of blood and tissue from Mrs. Billingsley's hair was consensual, and, in any event, the Petitioner lacks standing to question it. e.g. Rakas v. Illinois, 439 U.S. 128, 58 L. Ed. 2d 387, 99 S. Ct. 421 (1978) The obtaining of blood samples from the

Petitioner's house early the morning after the killing was a reasonable and expected incident to the investigation instigated by the Petitioner's summons. This seizure was based on the consent implied by the Petitioner's summons, which he had never withdrawn. In any event this evidence was favorable to the Petitioner.

3. The newspaper article which the Petitioner claims gave him the right to a continuance, could not have been prevented. Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 43 L. Ed. 2d 328, 85 S. Ct. 1029 (1975) Since such articles were to be expected whenever the case was set for trial, the principle advanced by the Petitioner would have delayed his trial indefinitely.

ARGUMENT

I.

ON THE SEARCHES AND SEIZURES

The issues here fall into the categories of both procedure and substance.

A.

PROCEDURE

Alabama law permits a Defendant to raise Fourth Amendment claims by either pre-trial motions or objections to the evidence at trial or both. The Court of Criminal Appeals of Alabama held that the Petitioner's motion was not sufficient to preserve his claims for review. To understand this ruling it is necessary to understand the way in which the Petitioner proceeded, and to understand that, it is necessary to understand why he proceeded that way.

The Petitioner was confronted with six items of physical evidence, which were found or seized on four different occasions. These were:

1. Mr. Abram's body on the Petitioner's living room floor.

2. The photographs of the body and the scene.

3. The Petitioner's blood-stained clothes seized after his arrest.

4. The blood and tissue found in Mrs. Billingsley's hair.

5. The recently fired shotgun found in the Petitioner's closet.

6. The blood samples seized from the house on the morning after the killing.

Now, of these the Petitioner has never really questioned items 1 or 2, although his boilerplate motion covered them. The Petitioner has and does question items 3, 4 and 5, but these searches and seizures

were obviously proper under well-established law. If the Petitioner had any claim at all to a violation of the Fourth Amendment, it was with regard to item 6, the blood samples. But, what did item 6 prove? These blood samples were shown by forensic testing to be of two different blood types, one Mr. Abrams', the other the Petitioners'. Item 6, then, tended to suggest that the homicide was the result of a mutual affray rather than a cold-blooded killing.[2] This, then, was and is the Petitioner's dilemma: If he could get items 1 through 5 suppressed along with item 6, then he had a good chance of winning acquittal, but, if he

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[2]This evidence was probably the reason the jury convicted the Petitioner of second degree murder instead of first degree murder as charged. In the state court appeal the State argued, among other things that the admission of these blood samples was harmless error, if it was error.

could not obtain the exclusion of 1 through 5, he certainly did not want item 6 suppressed.

This is what led the Petitioner to file his boilerplate motions and to resist all efforts to particularize his claims. The Learned Trial Judge was, in essence, asked to suppress all of the State's evidence even though most of it was manifestly legal from any point of view. The Court of Criminal Appeals of Alabama held that this boilerplate approach was not sufficient to preserve the Petitioner's claims. The Petitioner could have asserted his rights by objecting at trial to particular items of evidence, but this would have entailed precisely the sort of particularization which he was trying to avoid.

The State Court ruling on this procedural point was certainly reasonable

and would seem to provide an adequate state law ground for the affirmance of the conviction which the Petitioner seeks to have this Honorable Court review. See Parker v. North Carolina, 397 U.S. 790, 798-799, 25 L. Ed. 2d 785, 792-793, 90 S. Ct. 1458 (1970).

B.

THE MERITS OF THE SEARCHES

The Petitioner presents the decision of the Court of Criminal Appeals on the merits of these searches with these words:

> "...The decision by the Alabama Court that its citizens, by asking for police assistance, forfeit all reasonable expectations of privacy in their residence, dangerously expands the concept of a consent to search and seriously infringes upon Fourth and Fourteenth Amendment guarantees of freedom from warrantless intrusion...." (Petition, p. 8)

The Alabama Courts did not hold that asking for police assistance forfeits "...all reasonable expectations of privacy..." etc. The Alabama Courts simply took for granted the commonsense proposition that when you ask someone to do something, you ipso facto consent to their doing it. If I employ a surgeon to remove a wart from my face, and he or she does so in accordance with the usual medical procedures, would I have any basis for an assault action against the surgeon? One invited onto a premises is not a trespasser. 75 Am. Jr. 2d, Trespass, Section 40. If I employ a plumber to fix the pipes in my basement, and he enters my home and spends several days fixing the pipes, I obviously would have no basis to complain that I had not consented to the plumber's entering my

home. An invitation to enter a premises to do a job carries with it an implied consent to (1) enter the premises, (2) go anywhere on the premises consistent with the invitation and (3) remain on the premises long enought to finish the job. 87 C.J.S. Trespass, Section 49(b) There is absolutely no reason why this principle should not apply to the police. When the police are called to a residence by the householder to investigate a crime in the residence, the householder consents to the police entering the residence, going to any part of the residence consistent with the investigation and remaining there for such time as is reasonably necessary to finish the investigation. Roberts v. State, 258 Ala. 534, 63 So. 2d 584 (1953) Of course, the householder can at any time withdraw his consent, at which time the

police would have to leave, if they could not justify their presence by something other than consent. However, unless and until the householder withdraws his consent, the police can proceed to do the job they were called to do.

In the instant case, the police were called to the Petitioner's home at the Petitioner's direction to investigate either a drunk or a body. On arriving at the home they could see a prostrate body through the glass door. For all Officer Haye knew the "drunk" or "body" could have been a person in need of medical attention. He was certainly justified in entering the house by reason of the consent implied by the Petitioner's call and, independently, by the probable cause resulting from the information he had and what he observed in open view. See

Washington v. Chrisman, 455 U.S. 1, 70 L. Ed. 2d 778, 102 S. Ct. 812 (1982) On entering the house, the officers were confronted with many questions. Here was the body of an unknown person killed by a firearm. However, the Petitioner denied any knowledge of the victim or the killing. Who was the victim? Who had killed him? Where was the murder weapon? The possibility of the perpetrators still being on the premises was obvious.[3] In Mincey v. Arizona, (437 U.S. 385, 57 L. Ed. 2d 290, 98 S. Ct. 2408 [1978]) this Honorable Court followed the case of

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[3]The Petitioner makes much of the officers' testimony that they had accounted for all of the persons present in the house when they first entered. It was brought out on cross examination that the officers could so testify only because they knew that a search of the house had not produced anyone else. (R. p. 20)

Michigan v. Tyler, (436 U.S. 499, 56 L. Ed. 2d 486, 98 S. Ct. 1942 [1978]) in recognizing the duty of law enforcement officers to search a crime scene incident to their initial investigation, even where they have not been called to the scene by the owners of the property. The fact that the deceased had died of a gun shot wound, raised the likelihood that there were unaccounted for firearms on the premises. The need to gain control of firearms is a well recognized exigent circumstance. Cady v. Dombrowski, 413 U.S. 433, 37 L. Ed. 2d 706, 93 S. Ct. 2523 (1973) Finally, the fact that the deceased had died of a gunshot wound created the possibility that rapidly deteriorating evidence existed on the premises. It is well known that the discharge of a firearm creates a peculiar smell, which is often valuable

evidence.[4] However, such smells rapidly dissipate. This Honorable Court has long recognized that rapid loss of evidence is an exigent circumstance which justifies dispensing with a warrant. Schmerber v. California, 384 U.S. 757, 16 L. Ed. 2d 908, 86 S. Ct. 1826 (1966); Breithaupt v. Abram, 352 U.S. 432, 1 L. Ed. 2d 448, 77 S. Ct. 408 (1957) Thus, the initial search of the Petitioner's house was lawful in that it was pursuant to consent by the Petitioner and, independantly, because it was based on probable cause and exigent circumstances.

The police seized the Petitioner's bloodstained clothes after his arrest.

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[4]This is so in this case. During their initial investigation the officers located a shotgun in a closet which smelled of recent firing. This was strong evidence against the petitioner. However, had it not so smelled, it would have been strong defense evidence.

The right of officers to search for and to seize evidence incident to a lawful arrest is well-established. United States v. Robinson, 414 U.S. 218, 38 L. Ed. 2d 427, 94 S. Ct. 467 (1973); Gustafson v. Florida, 414 U.S. 260, 38 L. Ed. 2d 456, 94 S. Ct. 488 (1973) The fact that the officers did not seize the Petitioner's clothes at the moment of the arrest but took him to the station and allowed him to change clothes in privacy, hardly seems reprehensible. A policy requiring arresting officers to strip arrestees naked at the scene of the arrest would not be consistent with the Fourth Amendment.

The undisputed evidence was that the blood and tissue were cut from Mrs. Billingsley's hair with her consent. Therefore, this seizure was legal. In

any event, the Petitioner has no standing to question it. Rakas v. Illinois, 439 U.S. 128, 58 L. Ed. 2d 387, 99 S. Ct. 421 (1978)

The undisputed evidence in this case is that the police were called to the Petitioner's residence at his direction. They arrived and conducted an initial investigation. However, the yard of the residence could not be searched until daylight. Therefore, after doing what they could that night, most of the officers left. However, an officer remained on the premises. Early the next morning, while the yard was being searched, forensic specialists entered the house and obtained blood and tissue samples from the living room. These acts were a reasonably expected continuation of the investigation instigated by the

Petitioner's summons. Since the Petitioner called the police to his home to investigate a homicide and had never withdrawn the consent he implicitly extended by his call, these searches were authorized by consent. It must also be observed, as already pointed out, the evidence produced by this last search favored the Petitioner, since it tended to diminish the degree of his guilt.

Thus, all of the searches and seizures in this case were lawfull.

II.

PRE-TRIAL PUBLICITY

This claim presents again the oft rejected notion that any mention of a criminal case in the media ipso facto constitutes prejudicial pre-trial publicity and a denial of the due process. The Petitioner's crime, arrest, indictment, first trial, conviction, appeal and

the reversal on appeal were all historical facts. The setting of the re-trial was a matter of public record. The newspaper article merely recounted some of these historical facts in reporting the setting of the re-trial. The First Amendment prohibits states from interfering with such reporting. Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 43 L. Ed. 2d 328, 95 S. Ct. 1029 (1975) Whenever the case came up for trial, newspaper articles like this could be expected. If this sort of newspaper article automatically gives the accused the right to a continuance, this case would never be tried.

CONCLUSION

In conclusion the State of Alabama, Respondent, respectfully submits that the decisions and opinions of the Alabama Courts are correct and entirely consistent with the decisions of this Honorable Court and that the writ is due to be denied and the Respondent prays such denial.

Respectfully submitted,

CHARLES A. GRADDICK
ATTORNEY GENERAL

JOSEPH G. L. MARSTON, III
ASSISTANT ATTORNEY GENERAL

ADDRESS OF COUNSEL:

Office of Attorney General
250 Administrative Building
64 North Union Street
Montgomery, Alabama 36130
(205) 834-5150